



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,304	03/22/2004	Lamberta A. M. Klassen	381-2	9164

5409 7590 10/23/2006

SCHMEISER, OLSEN & WATTS
22 CENTURY HILL DRIVE
SUITE 302
LATHAM, NY 12110

EXAMINER

KARLS, SHAY LYNN

ART UNIT PAPER NUMBER

1744

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,304

Applicant(s)

KLASSEN ET AL.

Examiner

Shay L. Karls

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10,12,13,15-17 and 21-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,12,13,15-17 and 21-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/26/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 states that the cleaning tips are detachably securable on the universal handle, however claim 15 (which depends from claim 1) states that the cleaning tip is permanently attached to the universal handle. Since claim 15 depends from claim 1, it should further limit claim 1 however the claims appear to contradict each other. How can the cleaning tips be detachable securable and also permanently attached at the same time? Please clarify.

Claim 23 recites the limitation "the air passage in the top end" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 1744

Claims 1-2 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Fischer (USPN 6905335).

Fischer teaches a tooth cleaning kit (figures 2-4) comprising tooth and gum cleaning devices having various shaped cleaning end portions (24, 38 and 40). There is a universal handle (28) and a plurality of cleaning tips (26) being detachably securable onto the universal handle.

With regards to claim 2, the cleaning tips and the cleaning end portions progress in size from smaller to larger. Figure 3 shows the various sizes of cleaning tips (26) and figure 4 shows the various sizes of cleaning end portions).

With regards to claim 4, the cleaning tips are characterized by a 360 degree radially outward omni-directional cleaning surface shape (figure 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 12, 28-29, 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (USPN 6905335) in view of Boland et al. (USPN 6253404) and further in view of Carr (USPN 5765252).

Fischer teaches a tooth cleaning kit comprising a universal handle and various sized cleaning tips for attaching to the handle. Fischer's kit however fails to include a cleaning device as with cleaning tips as claimed and also fails to include cleaning end portions as claimed.

Boland teaches a tooth cleaning device comprising a universal handle (11) and a plurality of cleaning tips (figures 5-6 and 8-9) (claim 1). The cleaning tips progress in size from smaller to larger (figure 8-9 show the smallest and figures 5-6 show the larger) (claim 2). One of the cleaning tips has a multi-directional protrusion and brush-like shapes (figure 6A and 6D show the protrusions (on the tip) and the brush-like shapes (64)) (claim 3). The cleaning tips are characterized by a 360 degree radially outward omni-directional cleaning surface shape (the cleaning tips all have cleaning surfaces that extend 360 from the center) (claim 4). The cleaning tip (figure 8A) has a generally oblong shape when viewed from the top end of the cleaning tip (claim 5). The cleaning tips are tapered in shape toward the top end when viewed from the front and or side (figures 5-6) (claim 6 and 12). The cleaning tips can be non-round shapes (figure 8A) (claim 28). The plurality of cleaning tips are secured onto the universal handle and a toothbrush is formed. The toothbrush has bristles having a 360 degree shape, with an outer bristles shape that is at least partially non-round when viewed from the top end of the toothbrush (figure 8A) (claim 31). The plurality of cleaning tips are secured onto the universal handle and a toothbrush is formed. The toothbrush has bristles having a 360 degree shape, with an outer bristles shape that is at least partially tapered when viewed from the front of the toothbrush (figure 8A) (claim 32).

Carr teaches a tooth cleaning device having various shaped cleaning end portions (claim 1). The cleaning end portions progress in size from smaller to larger (figure 1-5 are for an adult while figure 7 is for a child and figure 8 is the largest cleaning device being used on an entire hand) (claim 2). The cleaning end portion in figure 8 has a generally oblong shaped when viewed from the top end of the end portion since the length is longer than the width (claim 5).

Art Unit: 1744

The end portions have a tapered shaped when view from the front (all the figures show that the device tapered from the sides to the top) (claim 6). The cleaning end portions has a non-round shape (figure 8) (claim 28). The cleaning end portions are designed to fit on a finger (figure 1) (claim 29).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the kit of Fischer with the universal handle cleaning tips and cleaning end portions as taught by Carr and Borland. It is known in the art that kits can be used to contain all the necessary elements for certain applications. Fischer teaches using a kit comprising many different tools for cleaning teeth however fails to teach the exact tools as claimed. It would have been obvious to one of skill in the art to interchange the tools in Fischer's kit for the tools of Boland and Carr so that all the proper tools for cleaning teeth are located in a kit.

Claims 1-6, 12, 28-29, 31-32, 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (USPN 6905335) in view of Robertelli (USPN 3987549) and further in view of Carr (USPN 5765252).

Fischer teaches a tooth cleaning kit comprising a universal handle and various sized cleaning tips for attaching to the handle. Fischer's kit however fails to include a cleaning device as with cleaning tips as claimed and also fails to include cleaning end portions as claimed.

Robertelli teaches a tooth cleaning device comprising a universal handle (12) and a plurality of cleaning tips (figure 2-7) (claim 1). The cleaning tips progress in size from smaller to larger (figure 4 shows the smallest, while figure 5 is the largest) (claim 2). One of the cleaning tips has a multi-directional protrusion and brush-like shapes (figure 5 shows bristle protrusions and the brush-like shapes) (claim 3). The cleaning tips are characterized by a 360

Art Unit: 1744

degree radially outward omni-directional cleaning surface shape (the cleaning tips all have cleaning surfaces that extend 360 from the center) (claim 4). The cleaning tips are tapered in shape toward the top end when viewed from the front and or side (figures 5-6) (claim 6 and 12). The cleaning tips can be non-round shapes (col. 3, lines 10-13) (claim 28). The plurality of cleaning tips are secured onto the universal handle and a toothbrush is formed. The toothbrush has bristles having a 360 degree shape, with an outer bristles shape that is at least partially non-round when viewed from the top end of the toothbrush (col. 3, lines 10-13) (claim 31). The plurality of cleaning tips are secured onto the universal handle and a toothbrush is formed. The toothbrush has bristles having a 360 degree shape, with an outer bristles shape that is at least partially tapered when viewed from the front of the toothbrush (figure 2) (claim 32). The plurality of cleaning tips are secured onto the universal handle and a toothbrush is formed. The toothbrush has bristles having omni-directional bristles, which rotate around the longitudinal axis of the universal handle at a variable speed (switch 16 control the speed) (claim 34). The toothbrush changed speed in response to rotational acceleration caused by the user (switch 16 controls the speed) (claim 35).

With regards to the limitation in claim 5 regarding the cleaning tips, Robertelli teaches all the essential elements of the claimed invention however fails to teach that the cleaning tips have a generally oval or elliptical or oblong shape when viewed from the top end of the cleaning tips. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use a cleaning tip with an oblong shaped cleaning tip because Applicant has not disclosed that an oblong cleaning tip provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected

Art Unit: 1744

Applicant's invention to perform equally well with a round or circular tip as taught by Robertelli or the claimed oblong shape because both shapes perform the same function of cleaning teeth equally well]. Therefore, it would have been obvious to one of ordinary skill in the art to modify Robertelli to obtain the invention as specified in claim 5.

Carr teaches a tooth cleaning device having various shaped cleaning end portions (claim 1). The cleaning end portions progress in size from smaller to larger (figure 1-5 are for an adult while figure 7 is for a child and figure 8 is the largest cleaning device being used on an entire hand) (claim 2). The cleaning end portion in figure 8 has a generally oblong shaped when viewed from the top end of the end portion since the length is longer than the width (claim 5). The end portions have a tapered shaped when view from the front (all the figures show that the device tapered from the sides to the top) (claim 6). The cleaning end portions has a non-round shape (figure 8) (claim 28). The cleaning end portions are designed to fit on a finger (figure 1) (claim 29).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the kit of Fischer with the universal handle cleaning tips and cleaning end portions as taught by Carr and Robertelli. It is known in the art that kits can be used to contain all the necessary elements for certain applications. Fischer teaches using a kit comprising many different tools for cleaning teeth however fails to teach the exact tools as claimed. It would have been obvious to one of skill in the art to interchange the tools in Fischer's kit for the tools of Robertelli and Carr so that all the proper tools for cleaning teeth are located in a kit.

Claims 7-10 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland and Carr as applied to claim 1 above and further in view of Diamant

Art Unit: 1744

(USPN 4406032) or Fischer, Robertelli and Carr as applied to claim 1 above and further in view of Diamant (USPN 4406032).

Fischer, Boland or Robertelli and Carr teach all the essential elements of the claimed invention. Boland and Robertelli teach that the cleaning tips have a generally planar surface (Boland, figure 8A, top and bottom horizontal surface of 80; Robertelli, figure 3 shows the planar surface being located at end of 34 opposite 28) (claim 8). Also the cleaning tips have raised ridges on a surface thereof (Boland, figure 6D; Robertelli, figure 3) (claim 9). The cleaning tips have raised bristles (Boland, flat sides bristles figure 6D; Robertelli, cylindrical shaped bristles figure 3) (claim 10). The references however fail to teach that the cleaning tips and the cleaning end portions are made from a resilient material such as foam (claim 7) and that the bristles can be arranged in a helical pattern (claim 33). Diamant teaches a toothbrush with a head made from a foam rubber (col. 3, lines 64-68). The head comprises bristles that take the form of a helical spring (col. 2, lines 62-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cleaning tips of Boland or Robertelli so that they included a helical shaped cleaning tip as taught by Diamant since the helical shape will produce surface irregularities in the brush surface which will increase the brushing efficiency (col. 3, lines 56-58). Additionally, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make all the cleaning tips of Boland and Robertelli from foam as taught by Diamant, since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416. Using a foam material for

Art Unit: 1744

the cleaning will help in producing surface irregularities in the brush surface which will increase brushing efficiency (col. 4, lines 4-9).

Claims 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland and Carr as applied to claim 1 above and further in view of Aoyama (USPN 6612770) or Fischer, Robertelli and Carr as applied to claim 1 above and further in view of Aoyama (USPN 6612770).

Fischer, Boland or Robertelli and Carr teach all the essential elements of the claimed invention however fail to teach that the cleaning tip has an air hole in the end (claim 13) and that the handle has an air passage therein, wherein the diameter of the air hole in the cleaning tip is substantially the same diameter as the air passage in the handle. Aoyama teaches a toothbrush comprising a handle with an air passage (8) and cleaning tips (2a-2c) with air holes (9) that correspond to the diameter of the air passage. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Boland and Robertelli with an air passageway in the handle and in the cleaning tips as taught by Aoyama so that air can flow between the handle and the cleaning tips to flush away or blow off leavings present around the roots of the bristles, facilitating the cleaning of the toothbrush (col. 4, lines 55-69). While Aoyama does not teach using the air passageway as a means for breathing through, it is clearly capable of performing this function. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland and Carr as applied to claim 1 above or Fischer, Robertelli and Carr as applied to claim 1 above.

Fischer, Boland or Robertelli and Carr teach all the essential elements of the claimed invention however fail to teach that the cleaning tips are permanently attached to a universal handle. The cleaning tips of Boland or Robertelli are currently detachable however it would have been obvious to modify Boland and Robertelli so that the cleaning tips are not detachable but are permanently fixed to the universal handle since making parts integral is a modification that has been considered to be within the level of ordinary skill in the art. *In re Larson*, 144 USPQ 347, 349.

Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland and Carr as applied to claim 15 above and further in view of Blaustein et al. (USPN 6836917) or Fischer, Robertelli and Carr as applied to claim 15 above and further in view of Blaustein et al. (USPN 6836917).

Fischer, Boland or Robertelli and Carr teach all the essential elements of the claimed invention however fail to teach that the handle is substantially oval or elliptical or oblong when viewed from a top or bottom of the handle (claim 16). Additionally the references fail to teach that the middle portion of the handle is smaller than the top and bottom of the handle (claim 17). Blaustein teaches a toothbrush comprising a handle with an oblong shape when viewed from the bottom (figures 2 and 3 show the dimensions of the handle). Also Blaustein's handle comprises a middle portion that is smaller in diameter than the top and bottom of the handle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the

Art Unit: 1744

shape of the handles of Boland or Robertelli with the shape of Blaustein's handle. Making the handle oblong or elliptical or oval is obvious since changing the size of a handle is a modification that has been considered to be within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237, 240. Additionally, making the middle portion of the handle have a smaller diameter will provide more support for the user's thumb and forefinger to make using the toothbrush easier and more comfortable (col. 4, lines 33-38).

Claims 21-22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland and Carr as applied to claim 1 above and further in view of Trenz et al. (USPN 6745427) or Fischer, Robertelli and Carr as applied to claim 1 above and further in view of Trenz et al. (USPN 6745427).

Fischer, Boland or Robertelli and Carr teach all the essential elements of the claimed invention however fail to teach that the cleaning tips are secured onto the universal handle by means of a securing mechanism that can be unlocked with a cam mechanism by pushing a rod from the bottom of the universal handle (claim 21). Additionally the references fail to teach that there is a button on the outer surface thereof which allows the rod to be pushed axially by a user and the button has sufficient elastic force to return the rod and the securing mechanism to a locked position (claim 22). The references also fail to teach that that cleaning tips are inserted and removed from the handle at an angle relative to the longitudinal center axis of the handle (claim 27). Boland and Robertelli teach that the cleaning tips are secured to the universal handle by means of snap fitting. When removing the tips the user has to grab the cleaning tips and pull with force when removing them. The cleaning tips of Boland and Robertelli are inserted and removed from the handle at an angle relative to the longitudinal axis of the handle. For Boland

Art Unit: 1744

the angle of insertion and removal is 90 degrees (figure 2) and for Robertelli the angle is 180 degrees (figure 1). Trenz teaches a cleaning device with a handle (5) and a brush element (1). The brush is attached to the handle by means of a securing mechanism (figure 3). The securing mechanism can be unlocked with a cam mechanism by pushing a rod (4a) from the bottom of the handle. There is a button (4) located on the outer surface of the handle, which has sufficient elastic force (12) to return the locking mechanism to a locked position. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Boland and Robertelli universal handle with a securing mechanism and cam mechanism as taught by Trenz for holding and releasing the cleaning tips so that the cleaning tips do not need to be touched by a user when removing. The cam mechanism would eliminate the necessity of touching the cleaning tips by hand (col. 1, lines 45-46). This in turn would prevent the spreading of bacteria from the used cleaning tip to the users hand when removing.

Claims 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland and Carr as applied to claim 1 above and further in view of Tortorice (USPN 6000410) or Fischer, Robertelli and Carr as applied to claim 1 above and further in view of Tortorice (USPN 6000410).

Fischer, Boland or Robertelli and Carr teach all the essential elements of the claimed invention however fail to teach that the handle is filled with a fluid that changes appearance during rigorous agitation. Tortorice teaches a toothbrush with a handle that comprises a fluid enclosed within. There are small objects which float within the fluid and when the handle is agitated the objects move around within the fluid solution changing the appearance of the handle. It would have been obvious to one of ordinary skill in the art at the time the invention was made

Art Unit: 1744

to modify the handle of Boland or Robertelli with a decorative handle such as the one taught by Tortorice for ornamental purposes. Changing the aesthetic (ornamental) design of an object is a modification that has been considered to within the level of ordinary skill in the art. *In re Seid*, 73 USPQ 431, 433.

Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland and Carr as applied to claim 1 above and further in view of Tortorice (USPN 6000410) and Silberman (USPN 2004/0161289) or Fischer, Robertelli and Carr as applied to claim 1 above and further in view of Tortorice (USPN 6000410) and Silberman (USPN 2004/0161289).

Fischer, Boland or Robertelli and Carr teach all the essential elements of the claimed invention however fail to teach that the handle is filled with two or more non-emulsifying fluids of different colors and densities which mix together during agitation and separate again when agitation stops. Tortorice teaches a toothbrush with a handle that comprises a fluid enclosed within. There are small objects which float within the fluid and when the handle is agitated the objects move around within the fluid solution changing the appearance of the handle. Silberman teaches a decorative device comprising a colored water-oil mixture ([0018]). When the device is agitated the water and oil mix and then separate when agitation stops. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the handle of Boland or Robertelli with a decorative handle such as the one taught by Tortorice filled a colored water-oil mixture as taught by Silberman for ornamental purposes. Changing the aesthetic (ornamental) design of an object is a modification that has been considered to within the level of ordinary skill in the art. *In re Seid*, 73 USPQ 431, 433.

Art Unit: 1744

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland and Carr as applied to claim 29 above and further in view of Drulias et al. (USPN 5392482) or Fischer, Robertelli and Carr as applied to claim 29 above and further in view of Drulias et al. (USPN 5392482).

Fischer, Boland or Robertelli and Carr teach all the essential elements of the claimed invention. Carr teaches that the cleaning devices comprises a cleaning member (64) molded to a flexible sleeve (60), wherein the flexible sleeve has an integrated finger loop (68) which is placed on a users finger. Carr however fails to teach that the cleaning member is made from a foam material. Drulias teaches a finger brush comprising a brush pad made from a foam material (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cleaning member of Carr from a foam material as taught by Drulias, since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416.

Claims 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Robertelli and Carr as applied to claim 34 above and further in view of Boland et al. (USPN 6253404).

Fischer, Robertelli and Carr teach all the essential elements of the claimed invention however fail to teach that the toothbrush is power to rotate the head of the toothbrush a number of degrees and then counter rotate the head a lesser number of degrees. Boland teaches a toothbrush with a brush head that rotates as well as oscillates. The brush head can be modified to do either motions (col. 8, lines 5-13). While Robertelli only teaches a rotating head, it would

Art Unit: 1744

have been obvious to one of ordinary skill in the art at the time the invention was made to modify the head so that it oscillates also. Allowing the head to oscillate as well as rotate increases the cleaning capabilities of the brush head. Additionally, one of skill in the art would by routine experimentation find the optimum number of degrees the head would need to rotate in both directions (clockwise and counterclockwise) to achieve the best possible cleaning.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Robertelli, Carr and Boland as applied to claim 35 above.

Fischer, Robertelli, Carr and Boland teach all the essential elements of the claimed invention however fail to teach that the handle has a graphic or grip pattern characterized by two or more circular, elliptical or oblong shapes of various sizes connected by substantially straight lines. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the handle of Robertelli with a decorative handle such as the one claimed for ornamental purposes. Changing the aesthetic (ornamental) design of an object is a modification that has been considered to within the level of ordinary skill in the art. *In re Seid*, 73 USPQ 431, 433. Additionally, it would have been obvious to a person of ordinary skill in the art to use a handle with shapes connected by straight lines because Applicant has not disclosed that the ornamental design provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the gripping means as taught by Robertelli or the claimed ornamental handle because both handles perform the same function of preventing the handle from slipping for a users hand equally well. Therefore, it would have been obvious to one of ordinary skill in the art to modify Robertelli to obtain the invention as specified in claim 37.

Art Unit: 1744

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland and Carr as applied to claim 21 above and further in view of Yamada (USPN 5706545) or Fischer, Robertelli and Carr as applied to claim 21 above and further in view of Yamada (USPN 5706545).

Fischer, Boland or Robertelli and Carr teach all the essential elements of the claimed invention however fail to teach that the handle comprises a first half portion and a second half portion which are snapped together to form a universal handle. Each of halves has a male protruding ridge on one side and a female receiving slot on the other side, which engage as the halves are snapped together. Yamada teaches a toothbrush comprising a handle with two halves (14a, 14b). The halves each have male protruding ridges (not shown, col. 3, lines 55-60) and female receiving slots (44). The male ridges snap into the female slots causing the two halves to connect together. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the handles of Boland or Robertelli with the handle halves that snap together as taught by Yamada since having the handle being separate pieces allows the mechanical elements within the handle to be accessible and therefore fixable necessary. It would save money and production costs, if a user could replace only a broken part rather than they whole toothbrush. Additionally, using snap fitting elements would allow for easy access without any tools.

Claims 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Drulias.

Fischer teaches a tooth cleaning kit comprising a portable case carrying a universal handle and various sized cleaning tips for attaching to the handle (claim 39). Fischer's case

Art Unit: 1744

includes a structural support comprising a foam insert shaped to receive various components of the kit (claim 44). Fischer's kit however fails to include a cleaning device as with cleaning tips as claimed and also fails to include cleaning end portions as claimed.

Boland teaches a tooth cleaning device comprising a universal handle (11) and a plurality of cleaning tips (figures 5-6 and 8-9) (claim 39). The cleaning tips progress in size from smaller to larger (figure 8-9 show the smallest and figures 5-6 show the larger). The smaller tips (figure 8A) could be used for children ages one to two since they are the smallest (claim 39 and 41). There are cleaning tips for older children (figure 5A, 6A) (claim 39). The cleaning tips in figure 5A could be used for children ages two to three (claim 42) and the cleaning tips in figure 6A could be used for children ages three to four (claim 43). The age the children are when they use the cleaning tips is intended use and holds no patentable weight. The cleaning tips could be used on any age child or adult for that matter. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Carr teaches a cleaning device comprising cleaning end portions. The cleaning device comprises a cleaning member (64) molded to a flexible sleeve (60), wherein the flexible sleeve has an integrated finger loop (68), which is placed on a users finger (claim 39). This cleaning device could be used to clean infant's teeth and gums (claim 40). Carr however fails to teach that the cleaning member is made from a foam material. Drulias teaches a finger brush comprising a brush pad made from a foam material (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cleaning member

of Carr from a foam material as taught by Drulias, since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the kit of Fischer with the universal handle cleaning tips and cleaning end portions as taught by Borland and Carr in view of Drulias. It is known in the art that kits can be used to contain all the necessary elements for certain applications. Fischer teaches using a kit comprising many different tools for cleaning teeth however fails to teach the exact tools as claimed. It would have been obvious to one of skill in the art to interchange the tools in Fischer's kit for the tools of Boland and Carr in view of Drulias so that all the proper tools for cleaning teeth are located in a kit.

Claims 39-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Robertelli, Carr and Drulias.

Fischer teaches a tooth cleaning kit comprising a portable case carrying a universal handle and various sized cleaning tips for attaching to the handle (claim 39). Fischer's case includes a structural support comprising a foam insert shaped to receive various components of the kit (claim 44). Fischer's kit however fails to include a cleaning device as with cleaning tips as claimed and also fails to include cleaning end portions as claimed.

Robertelli teaches a tooth cleaning device comprising a universal handle (12) and a plurality of cleaning tips (figures 2-7) (claim 39). The cleaning tips progress in size from smaller to larger (figure 4 shows the smallest and figures 5 shows the largest). The smaller tips (figure 4) could be used for children ages one to two since they are the smallest (claim 39 and 41).

Art Unit: 1744

There are cleaning tips for older children (2, 3, 5, 7) (claim 39). The cleaning tips in figure 3 could be used for children ages two to three (claim 42) and the cleaning tips in figure 5 could be used for children ages three to four (claim 43). The age the children are when they use the cleaning tips is intended use and holds no patentable weight. The cleaning tips could be used on any age child or adult for that matter. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Carr teaches a cleaning device comprising cleaning end portions. The cleaning device comprises a cleaning member (64) molded to a flexible sleeve (60), wherein the flexible sleeve has an integrated finger loop (68), which is placed on a users finger (claim 39). This cleaning device could be used to clean infant's teeth and gums (claim 40). Carr however fails to teach that the cleaning member is made from a foam material. Drulias teaches a finger brush comprising a brush pad made from a foam material (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cleaning member of Carr from a foam material as taught by Drulias, since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the kit of Fischer with the universal handle cleaning tips and cleaning end portions as taught by Robertelli and Carr in view of Drulias. It is known in the art that kits can be used to contain all the necessary elements for certain applications. Fischer teaches using a kit

Art Unit: 1744

comprising many different tools for cleaning teeth however fails to teach the exact tools as claimed. It would have been obvious to one of skill in the art to interchange the tools in Fischer's kit for the tools of Robertelli and Carr in view of Drulias so that all the proper tools for cleaning teeth are located in a kit.

Claims 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Drulias as applied to claim 44 above and further in view of Hammond (PGPub 20020008047) or Fischer, Robertelli, Carr and Drulias as applied to claim 44 above and further in view of Hammond (PGPub 20020008047).

Fischer, Boland or Robertelli, Carr and Drulias teach all the essential elements of the claimed invention. While the kit of Fischer comprises toothpaste (34a, 34b) (claim 46), the kit fails to further include a CD with instructions and a laminated instruction card for directions as to how to use the kit. Hammond teaches a kit for implementing first aid. The kit comprises an instruction video (48) and instruction card (44). While the kit of Hammond is not a kit for cleaning, it still related art, since it includes an instruction video and card in the kit to teach the user how to use the device in the kit. It would have been obvious to one of ordinary skill in the art to include an instructional video and card in the kit of Fischer so that the user knows how to use all the cleaning tips and cleaning end portions properly. Additionally, even though Hammond teaches an instruction tape (as shown in the drawings), it would have been obvious to modify the video to a compact disk since it is known in the art that they are equivalent structures that can be used interchangeably.

Conclusion

Art Unit: 1744

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L. Karls whose telephone number is 571-272-1268. The examiner can normally be reached on 7:00-4:30 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SKarl

Slk
10/18/06